



VAT on supplies of staff - clarifications from San Domenico Vetraria



On 11 March 2020 the Court of Justice of the EU ('CJEU') issued its decision in case C-94/19, San Domenico Vetraria SpA v Agenzia delle Entrate. The conclusions of the case may have implications on companies that share staff intra-group, businesses engaged in the supply of staff and corporate service providers engaged in the supply of directorship services, amongst others.



Background to the case

Avir seconded one of its directors to its subsidiary, San Domenico Vetraria, to hold the position of director with San Domenico Vetraria. Avir issued invoices to San Domenico Vetraria. The value on the invoices amounted to the exact costs incurred for the seconded director. VAT was applied to the fees which San Domenico Vetraria paid to Avir with respect to the said secondment.

Italian VAT law included a rule which specifically excluded from VAT the lending and secondment of employees on a pure cost basis.

On this basis, the Italian tax authorities took the view that the transaction fell outside scope of VAT and sought to block any related input VAT. The case was referred to the CJEU.

The CJEU concluded that insofar as there is a reciprocal relationship between the lending/secondment of staff and the amount paid in respect of same, EU VAT law precludes national legislation from treating lending or secondment of staff carried out in return for mere reimbursement of the related costs as falling outside scope of VAT. The Court further commented that the amount of the consideration i.e. whether it is equal to, greater or less than the costs incurred by the supplier is irrelevant to the analysis.



How can KPMG help?

In light of this case, it is even more important for businesses to ensure the proper VAT treatment of supplies of staff and directorship services, whether intra-group or otherwise. At KPMG we can assist in various ways including analysing the VAT treatment of supplies of staff/holders of office based on the specific agreements you have in place; setting out the implications on your business' input VAT recovery rights and identifying potential solutions which could improve the manner in which your business manages VAT.

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KPMG Observations

Although this case is the result of provisions specific to Italian VAT law which are not present in the Maltese VAT Act, its conclusions clarify and thus have a bearing on the VAT treatment of supply of staff or holders of offices by / to Maltese businesses. In our view, the salient observations may be summarised as follows:

1. The position of the CJEU is clear - the supply of staff for consideration (even though at no mark-up) should in principle attract VAT. Such applies even when the staff employed by one company is lent intra-group to another related company and the 'lender' merely recharges the cost – such recharge qualifies as a consideration for a supply by the 'lender'.
2. The San Domenico Vetraria case does not deal with scenarios where the employees are jointly employed by multiple companies (typically related companies). In terms of the Maltese VAT Act, an employee acting as such does not qualify as a taxable person for VAT purposes. This may be construed as excluding from VAT-taxability any intra-company recharges of pure staff costs where the relationship between the employee, the paymaster company and the company/companies for which the employee carries out their work is that of an employer and an employee.
3. Interestingly, the case did not delve into the fact that the person seconded by Avir acted as 'a holder of an office' of San Domenico Vetraria. For VAT purposes, a holder of an office is treated in the same manner as an employee. Thus, based on the general conclusions of the CJEU, the supply by a company of a person employed by it to act as a director on another company falls within scope of VAT.

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